

Proposed Ordinance
(Amended Ordinance as approved by H&HS 3/3/03)

Amending Title 9, Chapter 172 of the Minneapolis Code of Ordinances relating to Fire and Police Protection: Civilian Police Review Authority.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 172.10 of the above-entitled ordinance be amended to read as follows:

172.10. Civilian police review authority established. There is hereby created a Minneapolis Civilian Police Review Authority for the purpose of investigating allegations of misconduct on the part of officers of the Minneapolis Police Department and making findings of fact and conclusions based upon those findings of fact. ~~The review authority shall hire its own administrative and investigative staff. This staff shall include an executive director who shall be an attorney at law. Investigators hired by the review authority shall be civilians who have prior experience or training as investigators. "Civilian," for the purpose of this section, is a person who is not now, or has ever been a sworn officer of the Minneapolis Police Department.~~

Section 2. That Section 172.20 of the above-entitled ordinance be amended to read as follows:

172.20. Scope of authority. The review authority shall receive complaints that allege misconduct by an individual police officer or officers, including, but not limited to, the following:

- a) Use of excessive force;
- b) Inappropriate language or attitude;
- c) Harassment;
- d) Discrimination in the provision of police services or other discriminatory conduct on the basis of race, color, creed, religion, ancestry, national origin, sex, affectional preference, disability or age;
- e) Theft;
- f) Failure to provide adequate or timely police protection.
- g) Retaliation for filing a complaint with the review authority.

Section 3. That Section 172.30 of the above-entitled ordinance be amended to read as follows:

172.30. Composition Review authority membership. (a) *Composition.* The review authority shall be comprised of seven (7) members, four (4) of whom shall be appointed by the city council, and three (3) of whom shall be appointed by the mayor, subject to the approval of a majority of the city council ~~(7)~~. The members shall serve for terms of four (4) years, ~~except that in 1990, three (3) members shall be appointed for four (4) years, two (2) members appointed for three (3) years and two (2) members appointed for two (2) years.~~ From the members, a chairperson of the review authority shall be appointed by the mayor, for a term of two (2) years, subject to the approval of a majority of the city council. All members shall continue to serve until their successors have been appointed. Four (4) members shall constitute a quorum.

(b) *Qualifications.* All members shall be residents of the city. Residents currently or previously employed by the Minneapolis Police Department are ineligible to serve as members of the authority.

(c) *Minimum training requirements.* All members must participate in an annual training session as arranged by the Minneapolis Department of Civil Rights. All new members must complete training in the following subject areas as arranged by the Minneapolis Department of Civil Rights: police use of force, Minnesota Government Data Practices Act, Open Meeting law and Minnesota Public Employee Labor Relations Act, conflict of interest.

(d) *Removal.* Any member of the review authority may be removed, by vote of a majority of the city council and approval of the mayor, for incompetence, neglect of duty, misconduct or malfeasance, failure to participate in and complete minimum training requirements. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term by appointment by the mayor subject to approval of the city council. A member who has three (3) absences from meetings or complaint hearings in a calendar year shall automatically cease to be a member of the authority.

(e) *Compensation--Limitation.* Each member shall be paid fifty dollars (\$50.00) for each day when the member attends one (1) or more meetings or hearings, or fifteen dollars (\$15.00) per hour for every full hour spent reviewing case files or otherwise preparing for hearings related to complaints, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members. The total amount of per diem, payment for file review, and reimbursable expenses payable under this section shall not exceed the total annual budget allocation for such costs.

Section 4. That Section 172.35 of the above-entitled ordinance be and is hereby repealed.

~~**172.35. Compensation--Limitation.** Each member shall be paid fifty dollars (\$50.00) for each day when the member attends one or more meetings or hearings, or provides other services as authorized by board rule, and shall be reimbursed for expenses incurred in the performance of duties in the same manner and amount as other city boards and commission members.~~

~~The total amount of per diem and reimbursable expenses payable under this section shall not exceed the total annual budget allocation for such costs.~~

Section 5. That Section 172.40 of the above-entitled ordinance be amended to read as follows:

172.40. Review authority--Administrative Duties. (a) Rulemaking notice and hearing. The review authority shall adopt rules governing its operation. All rules, and any amendments thereto, ~~except rules governing the review authority's internal operations,~~ shall be enacted after a public hearing, at which interested persons may present written and oral evidence. ~~The review authority shall consult with the chief of police in developing these rules.~~ The review authority shall, at least thirty (30) days prior to the date set for the hearing, give notice of its intention to adopt rules by publishing notice of the proposed rule, the date and location of the hearing. The notice shall also be provided to the mayor, city council and chief of police.

(b) Rulemaking Hearing procedure. Rulemaking hearings shall be presided over by the chairperson of the review authority. The chairperson shall ensure that all persons involved in the hearing are treated fairly and impartially. After hearing and considering evidence, the review authority may choose to enact the proposed rule, enact an amended rule, or to not enact a rule. If the review authority chooses to enact a rule, the review authority shall enter into the record any written exhibits in support of the rule, along with a brief statement explaining why the review authority has adopted the rule and shall submit such rule for approval by ~~a majority~~ of the city council. Rules adopted by the review authority shall not be effective until approved by the city council.

~~(c) The review authority may enact additional rules for its internal operation. These rules need not be enacted subsequent to a public hearing nor be submitted to the city council for approval. Such rules shall be procedural rather than substantive and shall not have a direct impact on the rights of officers of the Minneapolis Police Department.~~

(d) (c) The review authority shall cooperate with the chief of police in developing procedures pursuant to *Garrity v. New Jersey*, 385 U.S. 493 (1967) and *Gardner v. Broderick Police Commissioner NY*, 392 U.S. 273 (1968) procedures.

Section 6. That Section 172.50 of the above-entitled ordinance be amended to read as follows:

172.50. Meetings. (a) The review authority shall meet once every month at a regularly scheduled time and place for the purpose of conducting evidentiary hearing requests for reconsideration, establishing the next month's hearing panel(s) and/or to conduct any other business necessary to the operation of the review authority. The review authority may meet at such additional times and places deemed necessary by its members, or on the call of the chairperson.

(b) Each month the chairperson of the review authority shall appoint panel(s) of three (3) members to conduct evidentiary hearings related to complaints as necessary during the subsequent month. The chairperson of the review authority shall designate a chairperson of each panel. The panels of three review authority members shall meet at scheduled times and places for the purpose of conducting evidentiary hearings related to complaints.

Section 7. That Section 172.60 of the above-entitled ordinance be and is hereby repealed.

~~**172.60. Members--Removal.** Any member of the review authority may be removed for incompetence, neglect of duty, misconduct or malfeasance by vote of a majority of the city council and approval of the mayor. Any vacancy occasioned by resignation, death, or removal of a member shall be filled for the balance of the unexpired term by appointment by the appointing authority subject to approval of a majority of the city council.~~

Section 8. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.60 to read as follows:

172.60 Review authority -- Substantive duties and powers. (a) Receive complaints alleging misconduct on the part of a Minneapolis police officer and conduct such investigations and inquiries as may reasonably appear necessary to find the facts with respect to the complaints.

(b) Conduct hearings related to complaints as provided in this chapter.

(c) Forward all investigatory findings and case recommendations to the chief of police.

(d) Conduct a program of research and study for the purpose of ascertaining how the objectives of this title may be attained and sustained.

(e) Compile statistics relating to complaints of police officer misconduct and present results of such analysis on a quarterly basis to the Public Safety and Regulatory Services Committee.

(f) Review Minneapolis Police Department policies and training procedures and make recommendations for change.

(g) Facilitate, along with Minneapolis Police Department, appropriate cultural awareness training for sworn officers as determined by the review authority.

(h) Participate in the performance review of the chief of police.

(i) Create and implement a community outreach program. Coordinate outreach activities with the Minneapolis Commission on Civil Rights.

(j) Submit quarterly reports to the Public Safety and Regulatory Services Committee as to the activities of the review authority.

Section 9. That Section 172.80 of the above-entitled ordinance be amended to read as follows:

172.80. Preliminary review. Within ~~thirty (30)~~ seven (7) days of the date that a complaint was filed, ~~the~~ review authority staff shall make a preliminary review of each complaint and determine whether an investigation of the alleged misconduct is warranted, whether ~~the matter shall be mediated~~ mediation is appropriate or whether no further action is necessary. ~~This decision shall be made in accordance with the rules promulgated by the review authority. The rules and guidelines shall provide some discretion to the executive director to begin investigations in lieu of a preliminary review.~~ All complaints shall be kept on file regardless of whether an investigation is initiated.

Section 10. That Section 172.90 of the above-entitled ordinance be amended to read as follows:

172.90. Investigations. If ~~the~~ review authority staff determines that further investigation is warranted, the complaint shall be investigated by ~~an~~ a review authority investigator ~~selected and hired by the review authority.~~ The investigator shall prepare recommended findings of fact and a recommendation of sustained or not sustained in a written summary. Such investigation shall be completed within ~~one hundred and twenty (120)~~ sixty (60) days of the date that the complaint was filed. The review authority manager may once extend this deadline by an additional ~~sixty (60)~~ thirty (30) days, with a written explanation of the reason(s) for the extension. The application of this deadline may be held in abeyance during such time as the complainant and officer are participating in mediation or the review authority staff determines that an investigation might impede or harm a criminal investigation.

Section 11. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.95 to read as follows:

172.95. Investigation review. Within seven (7) days of the date the written summary is submitted, the review authority manager shall review the investigative file and written summary. In conducting the review of the investigation, the review authority manager shall seek input from the complainant advocate. The review authority manager may recommend further investigation that shall be completed within thirty (30) days. In all cases in which no further investigation is recommended, the review authority manager shall present the case at the next meeting of a hearing panel of the review authority allowing for proper notice to the complainant and the police officer.

Section 12. That Section 172.100 of the above-entitled ordinance be and is hereby repealed.

172.100. Evidentiary hearings. Upon the completion of the investigation of a complaint, the review authority may dismiss, with the filing of written reasons for the dismissal, the complaint for lack of merit or conduct an evidentiary hearing. At an evidentiary hearing, the review authority shall weigh and consider all reliable and credible evidence presented. The review authority shall make reasonable efforts to commence and complete evidentiary hearings within sixty (60) days of the completion of the investigation. The chairperson of the review authority shall appoint a panel of one (1), three (3), five (5) or seven (7) members to conduct such evidentiary hearing. The chairperson of the review authority shall designate a chairperson of each panel. The executive director shall present evidence to the panel. ~~The employee may present evidence and conduct cross-examination of witnesses. No person other than the director or the employee, or their attorney or agent, may participate in the conduct of the hearing.~~

Section 13. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.100 to read as follows:

172.100. Hearings related to complaints. (a) Upon the completion of the investigation of a complaint, a three (3) member panel of the review authority shall weigh and consider all reliable and credible evidence presented. A police officer's report shall be considered reliable and credible evidence only if the officer submits to cross examination by the complainant's advocate. The review authority shall make reasonable efforts to conduct hearings related to complaints within thirty (30) days of the completion of the investigation.

(b) At the hearing, the review authority manager shall present the investigatory findings of fact and recommendations to the panel. No person other than the review authority manager and the panel members shall be present during the presentation and discussion of the case. At the close of the case presentation, the complainant and the police officer, or their representatives, shall each be permitted ten (10) minutes to address the review authority, in the presence of each other, regarding the complaint.

(c) Within thirty (30) days of the completion of a hearing, the hearing panel shall either remand the complaint to review authority staff for further investigation or issue a written report containing findings of fact and a determination of whether the complaint is sustained. This report shall be made public when permitted by the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes.

(d) Notice.

(1) At least ten (10) days prior to the scheduled hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the hearing.

(2) The review authority shall provide written notification of the hearing panel's decision to the complainant and officer.

Section 14. That Section 172.110 of the above-entitled ordinance be and is hereby repealed.

172.110. Subpoena power. The chairperson of the review authority may compel the presence of witnesses and/or documents at evidentiary hearings by applying to the Hennepin County District Court for subpoenas. The chairperson may also apply to the district court to punish a person who disobeys a subpoena obtained at the chairperson's request, in like manner as a contempt proceeding is initiated in Minnesota District Courts. ~~This section shall become effective after charter or legislature authorization.~~

Section 15. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.110 to read as follows:

172.110. Standard of proof. The standard of proof necessary to sustain a complaint is preponderance of the evidence. Preponderance of the evidence means that the greater weight of the evidence supports the decision.

Section 16. That Section 172.120 of the above-entitled ordinance be and is hereby repealed.

172.120. Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials with the review authority. The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in evidentiary hearings, and for access to data and records for the purpose of enabling the review authority to carry out its responsibilities under this chapter. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct.

Section 17. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.120 to read as follows:

172.120. Request for reconsideration by complainant. (a) Within five (5) days of receipt of the hearing panel's decision to not sustain a complaint, a complainant may submit a written request for reconsideration to the review authority.

(b) The review authority shall reconsider the complaint at its next regularly scheduled meeting that is not less than ten (10) days after the filing of the request. If the review authority determines that the request for reconsideration alleges newly discovered evidence, the complaint should be remanded to authority staff to investigate and resubmit findings within thirty (30) days. The review authority may sustain or reject the prior hearing panel decision regarding the complaint.

(c) The complainant and the police officer, or their representatives, shall be permitted ten (10) minutes each in the presence of each other to address the review authority regarding the request for consideration.

(d) Notice.

(1) The review authority staff shall provide written notification to the officer of the request for reconsideration.

(2) At least ten (10) days prior to the reconsideration hearing, the review authority shall provide written notification to the complainant and the police officer of the date, time and place of the reconsideration hearing.

(3) The review authority shall provide written notification of its reconsideration decision to the complainant and officer.

Section 18. That Section 172.130 of the above-entitled ordinance be and is hereby repealed.

172.130. Findings of fact and determination. Within thirty (30) days of the completion of an evidentiary hearing, the review authority shall issue a written report containing findings of fact and a determination of whether the complaint is sustained. This report shall be made public when permitted by the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes. When a complaint is sustained, the findings of fact and the determination shall be submitted to the chief of police, who shall make a disciplinary decision based upon this information. The chief of police shall provide the review authority and the mayor with a written explanation of the reason(s) for his/her disciplinary decision.

Section 19. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.130 to read as follows:

172.130. Disciplinary decision. (a) Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigatory file, the findings of fact and the panel determination to the chief of police, who shall make a disciplinary decision based upon this information. In all cases where the review authority sustained the complaint, the chief of police shall provide the review authority and the mayor with a written explanation of the reason(s) for that disciplinary decision.

(b) The review authority shall provide notice to the complainant of the final disciplinary decision.

Section 20. That Section 172.140 of the above-entitled ordinance be amended to read as follows:

172.140. Confidentiality. The members, staff, and contractors of the review authority shall comply with all of the provisions of the Minnesota Government Data Practices Act, Chapter 13 of Minnesota Statutes. All members, **staff**, and contractors of the review authority shall sign a contract agreeing to comply with the provisions of the Minnesota Government Data Practices Act, currently Chapter 13 of Minnesota Statutes. In return, the city will afford to such member, **staff**, or contractor the same legal protection that any other agent or employee of the city receives who performs duties within the scope of employment.

Section 21. That Section 172.150 of the above-entitled ordinance be and is hereby repealed.

172.150. Notice to parties. **The review authority shall notify the complainant(s) and police officer(s) in a timely fashion of the status or disposition of the complaint in conformance with Chapter 13 of Minnesota Statutes.**

Section 22. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.150 to read as follows:

172.150. Mediation. (a) The review authority shall inform all complainants and officers of the possibility of mediation as an alternative to the review authority processes.

(b) The review authority manager shall inform the chief of police of a decision to proceed to mediation.

(c) Mediation tolls the timelines established for the review authority investigation and hearing processes.

(d) No record will be made of the mediation proceedings, and no information discussed will be used in subsequent proceedings.

Section 23. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.170 to read as follows:

172.170. Staff. (a) The Minneapolis Department of Civil Rights shall provide staff to support the objectives of this chapter. Review authority staff shall consist of a manager, complainant advocate, and a community outreach advocate and other positions as necessary.

(b) General duties of the manager. The manager of the review authority shall be an attorney and shall report to the director of the department of civil rights. The manager shall administer the day-to-day operation of the review authority and aid the review authority in carrying out its purpose, including the implementation of a community outreach program.

(c) General duties of the review authority community outreach advocate. The community outreach advocate shall report to the manager of the authority and shall perform administrative duties as assigned including:

- (1) Timely and regular communications with complainant from complaint intake through final determination of case.
- (2) Consultation with the manager regarding case review process prior to the manager's recommendation of sustained or not sustained.
- (3) Implementation of community outreach program.

(d) Firewall. Department of civil rights staff with access to review authority files shall not have access to civil rights investigation files. Department of civil rights staff with access to civil rights investigation files shall not have access to the review authority files. Information from civil rights investigations shall not be shared with staff assigned to the review authority. Information from review authority investigations shall be shared only with staff assigned to the review authority. The director of the department of civil rights shall have an administrative role with regards to the review authority and shall not have access to investigative files of the review authority.

Section 24. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.180 to read as follows:

172.180. Requirement of cooperation by the Minneapolis Police Department and all other city employees and officials with the review authority. The Minneapolis Police Department and all other City of Minneapolis employees and officials shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests for information, for participation in evidentiary hearings, and for access to data and records for the purpose of enabling the review authority to carry out its responsibilities under this chapter. The police officer identified in the complaint shall attend the public portion of the any scheduled hearing. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation, or access shall be deemed an act of misconduct.

Section 25. That the Minneapolis Code of Ordinances be amended by adding thereto a new Section 172.190 to read as follows:

172.190. Conflict with internal affairs investigation. No matter shall be heard or complaint issued pursuant to the provisions of this title when the matter has been previously considered by Minneapolis Police Department internal affairs division.